

By: Isett

H.B. No. 950

A BILL TO BE ENTITLED

AN ACT

relating to an optional defined contribution retirement plan for persons eligible to participate in the Teacher Retirement System of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 8, Government Code, is amended by adding Chapter 826 to read as follows:

CHAPTER 826. OPTIONAL DEFINED CONTRIBUTION PLAN

Sec. 826.001. DEFINITIONS. In this chapter:

(1) "Optional defined contribution plan" means the plan established under this chapter.

(2) "Qualified plan" means an employees deferred compensation plan qualified under Section 403(b), Internal Revenue Code of 1986, and regulations adopted under that section.

Sec. 826.002. ESTABLISHMENT OF PLAN. (a) The retirement system shall establish and administer an optional defined contribution plan that is a qualified plan and under which a person eligible for membership in the system may elect to pay contributions to the optional defined contribution plan for the purchase of investment products selected by the person from among products that are authorized to be provided under a qualified plan and that are offered by companies authorized to provide the products in this state and selected by the board of trustees under Subsection (b).

1 (b) The board of trustees shall adopt rules for the
2 selection of companies that may provide investment products under
3 the optional defined contribution plan. The rules must provide for
4 the selection of vendors of a variety of investment products
5 authorized for a qualified plan. The retirement system shall select
6 vendors every two years.

7 (c) A provider of investment products is exempt from the
8 payment of franchise or premium taxes on products issued under the
9 optional defined contribution plan.

10 Sec. 826.003. ELIGIBILITY AND ELECTION TO PARTICIPATE IN
11 PLAN. (a) A person who holds a position included in the coverage of
12 the retirement system is eligible to participate in the optional
13 defined contribution plan unless the person is eligible to
14 participate or is participating in the optional retirement program
15 under Chapter 830.

16 (b) Participation in the optional defined contribution plan
17 is an alternative to participation as a contributing member of the
18 retirement system for the same period.

19 (c) A person eligible to participate in the optional defined
20 contribution plan may elect to participate in the plan not later
21 than the 90th day after the date the person begins service in a
22 position included in the coverage of the retirement system. The
23 election must be on a form prescribed by and filed with the board of
24 trustees. If a person does not make an election as provided by this
25 subsection, the person is considered to have elected to begin or
26 continue active membership in the retirement system.

27 (d) An election made under this section is irrevocable

1 except as provided by Section 826.007.

2 Sec. 826.004. EFFECT OF EMPLOYMENT CHANGES. A person
3 participating in the optional defined contribution plan continues
4 to participate in the plan when the person changes employment to
5 another position included in the coverage of the retirement system.

6 Sec. 826.005. WITHDRAWAL OF RETIREMENT SYSTEM
7 CONTRIBUTIONS. A person who participates in the optional defined
8 contribution plan may withdraw benefits attributable to
9 contributions in the manner and with the effect provided by
10 Subchapter A, Chapter 822.

11 Sec. 826.006. VESTING OF BENEFITS; TERMINATION OF
12 PARTICIPATION. (a) Benefits in the optional defined contribution
13 plan that are attributable to a participant's contribution under
14 Section 826.010(a) vest in the participant immediately.

15 (b) Benefits in the optional defined contribution plan that
16 are attributable to the state's contribution under Section
17 826.010(a) vest in a participant as follows:

18 (1) 20 percent on the first anniversary of the person's
19 participation in the plan;

20 (2) 40 percent on the second anniversary of the
21 person's participation in the plan;

22 (3) 60 percent on the third anniversary of the person's
23 participation in the plan;

24 (4) 80 percent on the fourth anniversary of the
25 person's participation in the plan; and

26 (5) 100 percent on the fifth anniversary of the
27 person's participation in the plan.

1 (c) A person terminates participation in the optional
2 defined contribution plan, without losing any vested benefits, by:

3 (1) death;

4 (2) retirement; or

5 (3) termination of employment in all positions
6 included in the coverage of the retirement system.

7 (d) The benefits of a product purchased under the optional
8 defined benefit plan become available under the terms of the
9 product but not before the participant terminates participation
10 under Subsection (c) or attains 70-1/2 years of age.

11 (e) Benefits in the optional defined contribution plan that
12 are attributable to the state's contribution under Section
13 826.010(a) that are not vested in a participant who terminates
14 participation shall be used to offset the amount of the state's
15 contribution.

16 Sec. 826.007. RESUMPTION OF RETIREMENT SYSTEM MEMBERSHIP. A
17 participant in the optional defined contribution plan is not
18 eligible to begin or resume active membership in the retirement
19 system unless the person terminates participation under Section
20 826.006 and assumes or resumes, after the month following the month
21 in which the person terminates participation, a position included
22 in the coverage of the retirement system. A person who assumes or
23 resumes a position becomes an active member of the retirement
24 system unless the person elects to resume participation in the
25 optional defined contribution plan in the manner and within the
26 time provided for beginning participation under Section 826.003.

27 Sec. 826.008. CREDITABLE SERVICE. A person may not

1 establish in the retirement system credit for service performed
2 during a period the person was participating in the optional
3 defined contribution plan.

4 Sec. 826.009. INVESTMENT ADVISORY FEES. (a) A participant
5 in the optional defined contribution plan may authorize the payment
6 of investment advisory fees from the amount in the participant's
7 custodial account or product if:

8 (1) the investment advisory fees for each fiscal year
9 do not exceed two percent of the annual value of the participant's
10 custodial account or product as of the last day of that fiscal year;

11 (2) the fees comply with applicable regulations of the
12 Securities and Exchange Commission;

13 (3) the investment advisor to whom the fees are paid is
14 registered with the Securities and Exchange Commission under the
15 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.)
16 and regulations adopted under that Act and is engaged full-time in
17 the business of providing investment advice;

18 (4) the participant and the investment advisor enter
19 into a contract for services that may be terminated by either party
20 at any time and that provides for the payment of fees as provided by
21 this section; and

22 (5) the retirement system has received an official
23 determination from the Internal Revenue Service that payment of
24 investment advisory fees as prescribed by this section is not a
25 distribution of funds that is prohibited or subject to taxation and
26 penalty under the Internal Revenue Code of 1986 and regulations
27 adopted under that code.

1 (b) The executive director of the retirement system shall
2 request an official determination from the Internal Revenue Service
3 concerning whether the payment of investment advisory fees as
4 prescribed by this section is a distribution of funds that is
5 prohibited or subject to taxation and penalty under the Internal
6 Revenue Code of 1986 and regulations adopted under that code. If
7 the executive director receives an official determination from the
8 Internal Revenue Service as specified by this subsection, the
9 executive director shall file the determination with the secretary
10 of state's office for publication in the Texas Register.

11 Sec. 826.010. CONTRIBUTIONS. (a) A participant in the
12 optional defined contribution plan shall make contributions to the
13 plan at the same rate that a member of the retirement system is
14 required to make for current service, and the state and each
15 employer shall make contributions to the plan for each participant
16 at the same rate, and in the same manner, as the state and each
17 employer are required to make for contributing members of the
18 retirement system.

19 (b) A participant in the optional defined contribution plan
20 and the participant's employer shall execute an agreement under
21 which the salary of the participant is reduced by the amount of the
22 contribution required by Subsection (a). An agreement under this
23 subsection is irrevocable until the participant terminates
24 participation in the plan under Section 826.006.

25 (c) Contributions shall be made in the manner provided by
26 Subchapter E, Chapter 825 for member contributions to the
27 retirement system.

1 Sec. 826.011. EXCESS BENEFIT ARRANGEMENT. The retirement
2 system may establish a governmental excess benefit arrangement as
3 provided by Section 415(m), Internal Revenue Code of 1986, and
4 regulations adopted under that section, for the purpose of
5 providing to participants in the optional defined contribution plan
6 any portion of a participant's benefits that would otherwise be
7 payable under the terms of the plan except for the limitation on
8 benefits imposed by Section 415, Internal Revenue Code of 1986, and
9 regulations adopted under that section.

10 Sec. 826.012. RULES. The board of trustees may adopt any
11 rules necessary to administer this chapter.

12 SECTION 2. Sections 822.005(a) and (c), Government Code, are
13 amended to read as follows:

14 (a) A person may withdraw all of the accumulated
15 contributions credited in the member's savings account if the
16 member:

17 (1) [who] is absent from service except by death or
18 retirement; or

19 (2) is participating in the optional defined
20 contribution plan under Chapter 826 ~~[may withdraw all of the~~
21 ~~accumulated contributions credited to the person in the member~~
22 ~~savings account].~~

23 (c) Except as provided by Subsection (a)(2), a [A] person is
24 not entitled to withdraw contributions who is employed, has applied
25 for employment, or has received a promise of employment, in a
26 position covered by the retirement system.

27 SECTION 3. Sections 825.404(b) and (e), Government Code, are

amended to read as follows:

(b) Before November 2 of each even-numbered year, the board of trustees shall certify to the comptroller of public accounts for review and adoption an estimate of the amount necessary to pay the state's contributions to:

(1) the retirement system for the following biennium;
and

(2) the optional defined contribution plan under Chapter 826 for the following biennium.

(e) All money appropriated by the state to the retirement system shall be paid to the state contribution account in equal monthly installments as provided by Section 403.093(c), Government Code, except money appropriated:

(1) under Subsection (d), which remains in the general revenue fund until expenses are approved under Chapter 2103; and

(2) for the payment of the state's contributions under Section 826.010(a).

SECTION 4. (a) The Teacher Retirement System of Texas shall offer participation in the optional defined contribution plan described by Chapter 826, Government Code, as added by this Act, beginning September 1, 2004.

(b) The change in law made by this Act applies only to a period of service described by Section 826.003(c), Government Code, as added by this Act, that begins on or after September 1, 2004.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2003.